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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

TASH HEPTING, GREGORY HICKS, CAROLYN JEWEL and ERIK KNUTZEN, on Behalf of Themselves and All Others Similarly Situated,	No. C-06-00672-VRW
Plaintiffs,	CLASS ACTION
vs.	DECLARATION OF KEVIN S. BANKSTON IN SUPPORT OF PLAINTIFFS' OPPOSITION TO MOTION OF DEFENDANT AT&T CORP. TO COMPEL RETURN OF CONFIDENTIAL DOCUMENTS
AT&T CORP., et al.	
Defendants.	Date: May 17, 2006 Time: 10:00 a.m. Courtroom: 6, 17th Floor Judge: Honorable Vaughn R. Walker

Dockets.Justia.com

I, Kevin S. Bankston, hereby declare:

1. I am an attorney of record for plaintiffs in this action and a member of good standing of the California State Bar, and am admitted to practice before this Court. I have personal knowledge of the matters stated in this declaration. If called upon to do so, I am competent to testify to all matters set forth herein.

2. On the afternoon of Friday, January 20, 2006, Shari Steele, the Executive Director of the Electronic Frontier Foundation (EFF), came to my office and informed me that a gentleman had walked into EFF's lobby unsolicited, saying that he had information linking AT&T to the National Security Agency's ("NSA") domestic surveillance program that he wanted to disclose to EFF, including several documents which he carried with him in a manila envelope.

3. I escorted the gentleman, who identified himself as Mark Klein, to my office for a private interview.

4. In my office, Mr. Klein informed me that he was a former AT&T employee with evidence of AT&T's collaboration with the NSA in its domestic spying program.

5. Mr. Klein handed to me excerpts of AT&T documents that he said described the technology behind AT&T's participation in the program, whereby the NSA had been given complete access to the Internet traffic transiting through at least one, and probably more, AT&T Internet facilities. At this point, I asked Senior Staff Attorney Lee Tien to come to my office and join the discussion with Mr. Klein.

6. In our conversation with Mr. Klein, Mr. Tien and I found him to be credible, and the document excerpts that he provided to us appeared to contain authentic and valuable information relevant to a potential case we were investigating.

7. After EFF filed the current class action against AT&T for its illegal participation in the NSA program on January 31, 2006, Mr. Klein, represented by counsel, agreed to serve as a declarant for plaintiffs' preliminary injunction motion regarding the AT&T Internet surveillance of which he had evidence, and provided complete copies of the AT&T documents to EFF on February 28, 2006.

8. The AT&T documents attached as exhibits to the declaration of Mr. Klein are the only AT&T documents provided to EFF by Mr. Klein.

9. Prior to January 20, 2006, no one at EFF had met or communicated with Mr. Klein in any way.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 1st day of May, 2006, at San Francisco, California.

/s/ Kevin S. Bankston
KEVIN S. BANKSTON

I, Maria V. Morris, am the ECF User whose ID and password are being used to file this Declaration of Kevin S. Bankston in Support of Plaintiffs' Opposition to Motion of Defendant AT&T Corp. to Compel Return of Confidential Documents. In compliance with General Order 45, X.B., I hereby attest that Kevin S. Bankston has concurred in this filing.

DATED: May 1, 2006

/s/ Maria V. Morris
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CERTIFICATE OF SERVICE

I hereby certify that on May 1, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

/s/ Maria V. Morris

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